

# SENATE BILL 785

K3, C8, B5

0lr2630  
CF 0lr2796

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By: **Senators Peters, Lenett, Raskin, and Robey**

Introduced and read first time: February 10, 2010

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Investment Protection Act**

3 FOR the purpose of establishing the Public Investment Protection Act; stating findings  
4 and declarations of the General Assembly; requiring that certain employers  
5 receiving certain State subsidies pay certain wages to certain employees;  
6 requiring certain employers to participate in a certain apprenticeship program;  
7 requiring certain employers to enter into certain labor agreements with certain  
8 labor organizations; requiring the Commissioner of Labor and Industry to  
9 publish certain wage rates at certain times; requiring that certain agreements  
10 between the State and certain persons include certain provisions; requiring  
11 employers to post a certain notice at certain work sites; requiring certain  
12 employers to keep certain records and to make the records available to the  
13 Commissioner at certain times for certain purposes; establishing presumptions;  
14 prohibiting certain employers from discharging or taking other adverse actions  
15 against certain employees or other persons; authorizing certain persons to bring  
16 court actions for certain remedies for certain violations; specifying penalties;  
17 authorizing the Commissioner to conduct investigations, make determinations,  
18 and issue orders; authorizing certain persons to bring a private right of action  
19 against certain employers for certain violations; authorizing the Commissioner  
20 to adopt certain regulations; defining certain terms; providing for the  
21 construction of this Act; providing for the application of this Act; making this  
22 Act severable; and generally relating to the Public Investment Protection Act.

23 BY repealing and reenacting, with amendments,  
24 Article – Labor and Employment  
25 Section 3–413  
26 Annotated Code of Maryland  
27 (2008 Replacement Volume and 2009 Supplement)

28 BY adding to  
29 Article – Labor and Employment

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3–1001 through 3–1012 to be under the new subtitle “Subtitle 10. Public  
2 Investment Protection Act”  
3 Annotated Code of Maryland  
4 (2008 Replacement Volume and 2009 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Labor and Employment**

8 3–413.

9 (a) In this section, “employer” includes a governmental unit.

10 (b) Except as provided in § 3–414 of this subtitle **AND SUBTITLE 10 OF**  
11 **THIS TITLE**, each employer shall pay:

12 (1) to each employee who is subject to both the federal Act and this  
13 subtitle, at least the greater of:

14 (i) the minimum wage for that employee under the federal Act;  
15 or

16 (ii) a wage that equals a rate of \$6.15 per hour; and

17 (2) each other employee who is subject to this subtitle, at least:

18 (i) the greater of:

19 1. the highest minimum wage under the federal Act; or

20 2. a wage that equals a rate of \$6.15 per hour; or

21 (ii) a training wage under regulations that the Commissioner  
22 adopts that include the conditions and limitations authorized under the federal Fair  
23 Labor Standards Amendments of 1989.

24 **SUBTITLE 10. PUBLIC INVESTMENT PROTECTION ACT.**

25 **3–1001.**

26 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
27 **INDICATED.**

28 (B) **“BASE MINIMUM WAGE” MEANS AN HOURLY MINIMUM WAGE RATE**  
29 **THAT IS EQUAL TO 130% OF THE HIGHER OF:**

1           **(1) THE MARYLAND MINIMUM WAGE AS PROVIDED UNDER**  
2 **SUBTITLE 4 OF THIS ARTICLE; OR**

3           **(2) THE FEDERAL MINIMUM WAGE AS PROVIDED UNDER THE**  
4 **FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201 ET SEQ.**

5           **(C) “BUILDING SERVICE EMPLOYEE” MEANS A PERSON WHO PERFORMS**  
6 **WORK IN CONNECTION WITH THE CARE AND MAINTENANCE OF PROPERTY,**  
7 **INCLUDING THE POSITIONS OF WATCHMAN, SECURITY OFFICER, CONCIERGE,**  
8 **DOORPERSON, CLEANER, JANITOR, CUSTODIAN, SUPERINTENDENT, PORTER,**  
9 **ENGINEER, MAINTENANCE PERSON, HANDYPERSON, ELEVATOR OPERATOR,**  
10 **ELEVATOR STARTER, WINDOW CLEANER, OR GROUNDSKEEPER.**

11           **(D) “CONSTRUCTION” HAS THE MEANING STATED IN § 17-201 OF THE**  
12 **STATE FINANCE AND PROCUREMENT ARTICLE.**

13           **(E) “CONSTRUCTION EMPLOYEE” MEANS ANY LABORER OR MECHANIC**  
14 **PERFORMING CONSTRUCTION.**

15           **(F) (1) “EMPLOYEE” MEANS ANY PERSON WHO PERFORMS WORK ON**  
16 **OR RELATED TO A PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT**  
17 **SUBSIDIES.**

18           **(2) “EMPLOYEE” INCLUDES:**

19                   **(I) AN INDIVIDUAL WHO PERFORMS WORK ON A**  
20 **FULL-TIME, PART-TIME, TEMPORARY, OR SEASONAL BASIS; AND**

21                   **(II) AN INDIVIDUAL WHO IS MADE AVAILABLE TO PERFORM**  
22 **WORK FOR AN ENTITY THROUGH THE SERVICES OF A TEMPORARY SERVICES,**  
23 **STAFFING, OR EMPLOYMENT AGENCY OR A SIMILAR ENTITY.**

24           **(G) “FOOD SERVICE EMPLOYEE” MEANS A PERSON WHO PERFORMS**  
25 **WORK IN CONNECTION WITH THE PREPARATION AND SERVICE OF FOOD AND**  
26 **BEVERAGES, INCLUDING A CAFETERIA ATTENDANT, LINE ATTENDANT, COOK,**  
27 **PREPARATORY COOK, BUTCHER, BAKER, SERVER, CASHIER, CATERING**  
28 **WORKER, DINING ATTENDANT, DISHWASHER, FOOD OR MERCHANDISE VENDOR,**  
29 **PANTRY WORKER, WAITER, OR WAITRESS.**

30           **(H) “GROCERY EMPLOYEE” MEANS A PERSON WHO PERFORMS WORK IN**  
31 **CONNECTION WITH THE PREPARATION AND SELLING OF MERCHANDISE IN A**  
32 **GROCERY STORE OR OTHER RETAIL STORE THAT SELLS MORE THAN A MINIMAL**  
33 **VOLUME OF GROCERIES, INCLUDING THE POSITIONS OF CLERK, CASHIER,**  
34 **STOCKROOM WORKER, MANAGER, ASSISTANT MANAGER, CHIEF MEAT CUTTER,**

1 ASSISTANT CHIEF MEAT CUTTER, MEAT CUTTER, APPRENTICE MEAT CUTTER,  
2 WRAPPER, LEAD OR FRONT-END COORDINATOR, CHEF, COOK, BAKER, CAKE  
3 DECORATOR, OR RECEIVER.

4 (I) "HOTEL EMPLOYEE" MEANS A PERSON WHO PERFORMS WORK IN  
5 CONNECTION WITH THE CARE AND MAINTENANCE OF A HOTEL AND THE  
6 SERVICING OF GUESTS, INCLUDING A HOUSEKEEPER, KITCHEN EMPLOYEE,  
7 LAUNDRY EMPLOYEE, ROOM ATTENDANT, HOUSE ATTENDANT, PUBLIC AREA  
8 ATTENDANT, TURNDOWN ATTENDANT, BELL ATTENDANT, DOOR ATTENDANT,  
9 DRIVER, TELEPHONE OPERATOR, SERVER, BUS ATTENDANT, BARTENDER,  
10 CASHIER, HOST, CONCIERGE, RESERVATION ATTENDANT, OR FRONT DESK  
11 ATTENDANT.

12 (J) "PREVAILING WAGE" MEANS:

13 (1) FOR CONSTRUCTION EMPLOYEES, THE HIGHER OF:

14 (I) THE WAGES AND BENEFITS DETERMINED BY THE  
15 COMMISSIONER FOR THE JOB CLASSIFICATION UNDER THE STATE PREVAILING  
16 WAGE FOR PUBLIC WORKS UNDER § 17-208 OF THE STATE FINANCE AND  
17 PROCUREMENT ARTICLE; OR

18 (II) THE WAGES AND BENEFITS DETERMINED BY THE  
19 UNITED STATES DEPARTMENT OF LABOR FOR THE JOB CLASSIFICATION  
20 UNDER THE DAVIS BACON ACT, 40 U.S.C. § 276A; AND

21 (2) FOR BUILDING SERVICE EMPLOYEES, FOOD SERVICE  
22 EMPLOYEES, GROCERY EMPLOYEES, AND HOTEL EMPLOYEES, THE AGGREGATE  
23 OF:

24 (I) 1. THE WAGE DETERMINED BY THE UNITED STATES  
25 DEPARTMENT OF LABOR FOR THE JOB CLASSIFICATION UNDER THE SERVICE  
26 CONTRACT ACT, 41 U.S.C. § 351 ET SEQ.; OR

27 2. IF NO SUCH DETERMINATION EXISTS, THE  
28 PREVAILING WAGE FOR THE JOB CLASSIFICATION AT SIMILAR LOCATIONS IN  
29 THE SAME REGION OF THE STATE AS DETERMINED BY THE COMMISSIONER;

30 (II) 1. THE FRINGE BENEFITS DETERMINED BY THE  
31 UNITED STATES DEPARTMENT OF LABOR FOR THE JOB CLASSIFICATION  
32 UNDER THE SERVICE CONTRACT ACT, 41 U.S.C. § 351 ET SEQ.; OR

33 2. IF NO SUCH DETERMINATION EXISTS, THE  
34 PREVAILING FRINGE BENEFITS, CONVERTED TO AN HOURLY WAGE

1 SUPPLEMENT, FOR THE JOB CLASSIFICATION AT SIMILAR LOCATIONS IN THE  
2 SAME REGION OF THE STATE AS DETERMINED BY THE COMMISSIONER; AND

3 (III) 1. THE PAID LEAVE DETERMINED BY THE UNITED  
4 STATES DEPARTMENT OF LABOR FOR THE JOB CLASSIFICATION UNDER THE  
5 SERVICE CONTRACT ACT, 41 U.S.C. § 351 ET SEQ.; OR

6 2. IF NO SUCH DETERMINATION EXISTS, THE PAID  
7 LEAVE FOR THE JOB CLASSIFICATION AT SIMILAR LOCATIONS IN THE SAME  
8 REGION OF THE STATE AS DETERMINED BY THE COMMISSIONER.

9 (K) "PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT  
10 SUBSIDIES" MEANS:

11 (1) A REAL ESTATE DEVELOPMENT PROJECT OR PROPERTY THAT  
12 RECEIVES OR BENEFITS FROM A STATE ECONOMIC DEVELOPMENT SUBSIDY; OR

13 (2) ANY EMPLOYER THAT RECEIVES OR BENEFITS FROM A STATE  
14 ECONOMIC DEVELOPMENT SUBSIDY.

15 (L) "REGION OF THE STATE" MEANS ONE OF THE FOLLOWING FOUR  
16 REGIONS:

17 (1) BALTIMORE CITY;

18 (2) MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY;

19 (3) BALTIMORE COUNTY, HOWARD COUNTY, AND ANNE  
20 ARUNDEL COUNTY; AND

21 (4) THE REMAINDER OF THE STATE.

22 (M) "SIMILAR LOCATIONS" MEANS:

23 (1) BUILDING SERVICE EMPLOYEES IN NONRESIDENTIAL  
24 COMMERCIAL OR INSTITUTIONAL BUILDINGS, SHOPPING MALLS, OR SPORTS  
25 STADIUMS OF 100,000 OR MORE SQUARE FEET;

26 (2) BUILDING SERVICE EMPLOYEES IN RESIDENTIAL BUILDINGS  
27 OF AT LEAST 50 UNITS;

28 (3) FOOD SERVICE EMPLOYEES IN COMMERCIAL OFFICE OR  
29 INSTITUTIONAL BUILDINGS OF 100,000 OR MORE SQUARE FEET;

1           (4) GROCERY EMPLOYEES IN GROCERY STORES HAVING RETAIL  
2 SPACE OF **30,000** OR MORE SQUARE FEET; OR

3           (5) HOTEL EMPLOYEES IN HOTELS OF **100,000** OR MORE SQUARE  
4 FEET.

5           (N) "STATE ECONOMIC DEVELOPMENT SUBSIDY" MEANS FINANCIAL  
6 ASSISTANCE IN ANY FORM VALUED AT **\$250,000** OR MORE THAT IS PROVIDED BY  
7 THE STATE FOR THE PURPOSE OF:

8           (1) ECONOMIC DEVELOPMENT;

9           (2) COMMUNITY DEVELOPMENT;

10          (3) JOB GROWTH OR RETENTION; OR

11          (4) OTHER SIMILAR PURPOSES, INCLUDING:

12               (I) CASH PAYMENTS OR GRANTS;

13               (II) LOANS OR LOAN GUARANTEES;

14               (III) BOND FINANCING;

15               (IV) THE LEASING OR CONVEYANCE OF PUBLIC LAND; OR

16               (V) INFRASTRUCTURE OR CAPITAL IMPROVEMENTS.

17 **3-1002.**

18           THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

19           (1) EMPLOYERS EMPLOYING CONSTRUCTION EMPLOYEES,  
20 BUILDING SERVICE EMPLOYEES, FOOD SERVICE EMPLOYEES, GROCERY  
21 EMPLOYEES, OR HOTEL EMPLOYEES WORKING ON PROJECTS RECEIVING STATE  
22 ECONOMIC DEVELOPMENT SUBSIDIES SHALL PAY THEIR EMPLOYEES A  
23 PREVAILING WAGE IN ORDER TO SAFEGUARD THE EFFICIENCY AND GENERAL  
24 WELL-BEING OF THOSE EMPLOYEES AND TO PROTECT THEM AND THEIR  
25 EMPLOYERS FROM THE EFFECTS OF SERIOUS AND UNFAIR COMPETITION BASED  
26 ON LOW WAGE LEVELS THAT ARE DETRIMENTAL TO EFFICIENCY AND  
27 WELL-BEING;

28           (2) (I) PROJECTS THAT RECEIVE STATE ECONOMIC  
29 DEVELOPMENT SUBSIDIES AND INVOLVE EMPLOYERS EMPLOYING

1 CONSTRUCTION EMPLOYEES, BUILDING SERVICE EMPLOYEES, FOOD SERVICE  
2 EMPLOYEES, GROCERY EMPLOYEES, OR HOTEL EMPLOYEES SHALL ENTER INTO  
3 AGREEMENTS THAT PROHIBIT LABOR ORGANIZATIONS FROM ENGAGING IN,  
4 RATIFYING, OR ENCOURAGING PICKETING, HANDBILLING, STRIKING, OR OTHER  
5 WORK STOPPAGES TO PROTECT THE STATE'S PROPRIETARY INTEREST AND  
6 INVESTMENT IN THE PROJECTS; AND

7 (II) THESE AGREEMENTS ENSURE THAT THE STATE'S  
8 PROPRIETARY INTEREST AND INVESTMENT IN THE PROJECTS ARE PROTECTED  
9 BY COMBATING THE POSSIBILITY OF POTENTIALLY COSTLY DELAYS, THEREBY  
10 INCREASING THE PROBABILITY THAT THE PROJECTS ARE COMPLETED ON TIME  
11 AND ON BUDGET; AND

12 (3) (I) PROJECTS THAT RECEIVE STATE ECONOMIC  
13 DEVELOPMENT SUBSIDIES AND INVOLVE EMPLOYERS EMPLOYING  
14 CONSTRUCTION EMPLOYEES SHALL ENTER INTO AGREEMENTS THAT REQUIRE  
15 THOSE EMPLOYERS TO USE THE HIRING HALLS OF QUALIFIED LABOR  
16 ORGANIZATIONS TO PROTECT THE STATE'S PROPRIETARY INTEREST AND  
17 INVESTMENT IN THE PROJECTS; AND

18 (II) THESE AGREEMENTS ENSURE THAT THE STATE'S  
19 PROPRIETARY INTEREST AND INVESTMENT IN THE PROJECTS ARE PROTECTED  
20 BY HELPING TO ENSURE THAT THE PROJECTS HAVE A STABLE, HIGHLY SKILLED,  
21 AND READILY AVAILABLE WORKFORCE, THEREBY RESULTING IN LOWER COSTS  
22 FOR REPAIRS AND MAINTENANCE OVER THE LIFE OF THE PROJECT.

23 **3-1003.**

24 THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYER THAT IS:

25 (1) A SMALL BUSINESS WITH 10 OR FEWER EMPLOYEES UNLESS  
26 THE SMALL BUSINESS CONTRACTS TO PROVIDE BUILDING SERVICES OR FOOD  
27 SERVICES; OR

28 (2) A NONPROFIT ORGANIZATION THAT IS EXEMPT FROM  
29 TAXATION UNDER SECTION 501(C)(3) OF THE UNITED STATES INTERNAL  
30 REVENUE CODE.

31 **3-1004.**

32 (A) (1) A CONSTRUCTION EMPLOYEE, BUILDING SERVICE EMPLOYEE,  
33 FOOD SERVICE EMPLOYEE, GROCERY EMPLOYEE, OR HOTEL EMPLOYEE SHALL  
34 BE PAID THE HIGHER OF:

1                   **(I) THE PREVAILING WAGE FOR THE EMPLOYEE'S JOB**  
2 **CLASSIFICATION FOR ALL WORK PERFORMED ON OR RELATED TO A PROJECT**  
3 **RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES; OR**

4                   **(II) THE BASE MINIMUM WAGE.**

5                   **(2) EVERY OTHER EMPLOYEE ON A PROJECT RECEIVING STATE**  
6 **ECONOMIC DEVELOPMENT SUBSIDIES SHALL BE PAID NOT LESS THAN THE BASE**  
7 **MINIMUM WAGE.**

8                   **(B) (1) AN EMPLOYER OF CONSTRUCTION EMPLOYEES SHALL**  
9 **PARTICIPATE IN AN APPRENTICESHIP PROGRAM, AS DEFINED IN § 17-601(G) OF**  
10 **THE STATE FINANCE AND PROCUREMENT ARTICLE, FOR EACH COVERED CRAFT**  
11 **IN WHICH THE EMPLOYER WILL EMPLOY PERSONS TO PERFORM WORK ON OR**  
12 **RELATED TO A PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT**  
13 **SUBSIDIES.**

14                   **(2) BEFORE COMMENCING WORK ON OR RELATED TO A PROJECT**  
15 **RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES, AN EMPLOYER OF**  
16 **CONSTRUCTION EMPLOYEES SHALL PROVIDE TO THE COMMISSIONER OR THE**  
17 **COMMISSIONER'S DESIGNATED AGENT WRITTEN VERIFICATION, AS SPECIFIED**  
18 **IN § 17-603 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, THAT THE**  
19 **EMPLOYER AND ANY SUBCONTRACTOR THAT THE EMPLOYER WILL USE:**

20                   **(I) PARTICIPATES IN AN APPRENTICESHIP TRAINING**  
21 **PROGRAM; AND**

22                   **(II) SHALL COMPLY WITH THE PAYMENT REQUIREMENTS**  
23 **SPECIFIED UNDER § 17-605 OF THE STATE FINANCE AND PROCUREMENT**  
24 **ARTICLE.**

25                   **(C) (1) EMPLOYERS OF CONSTRUCTION EMPLOYEES FOR A PROJECT**  
26 **RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES SHALL ENTER INTO AN**  
27 **AGREEMENT WITH EACH LABOR ORGANIZATION ACTIVE IN REPRESENTING OR**  
28 **SEEKING TO REPRESENT CONSTRUCTION EMPLOYEES FOR THE PURPOSES OF**  
29 **COLLECTIVE BARGAINING WITHIN THE GEOGRAPHIC AREA IN WHICH THE**  
30 **PROJECT IS SITUATED.**

31                   **(2) THE AGREEMENT REQUIRED UNDER PARAGRAPH (1) OF THIS**  
32 **SUBSECTION AT A MINIMUM SHALL CONTAIN THE FOLLOWING PROVISIONS:**

33                   **(I) THE LABOR ORGANIZATION AGREES NOT TO ENGAGE IN,**  
34 **ENCOURAGE, OR RATIFY ANY PICKETING, HANDBILLING, STRIKING, OR OTHER**

1 WORK STOPPAGES AT ANY CONSTRUCTION PROJECT RECEIVING STATE  
2 ECONOMIC DEVELOPMENT SUBSIDIES; AND

3 (II) THE EMPLOYER AND ALL SUBCONTRACTORS OF ANY  
4 TIER AGREE THAT IT WILL USE THE HIRING HALLS OF ANY SIGNATORY LABOR  
5 ORGANIZATION AS ITS FIRST SOURCE OF EMPLOYEES FOR ANY CONSTRUCTION  
6 PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES, PROVIDED  
7 THE EMPLOYER AND ALL SUBCONTRACTORS OF ANY TIER:

8 1. MAY RESERVE THE RIGHT TO SELECT AND HIRE  
9 ALL SUPERVISORS IT CONSIDERS NECESSARY AND DESIRABLE; AND

10 2. MAY EMPLOY CONSTRUCTION EMPLOYEES FROM  
11 ANY AVAILABLE SOURCE IF THE SIGNATORY LABOR ORGANIZATION FAILS TO  
12 REFER EMPLOYEES WITHIN 48 HOURS, NOT INCLUDING SATURDAYS, SUNDAYS,  
13 AND HOLIDAYS, AFTER REQUESTED TO DO SO BY THE EMPLOYER.

14 (D) (1) AN EMPLOYER OF BUILDING SERVICE EMPLOYEES, FOOD  
15 SERVICE EMPLOYEES, GROCERY EMPLOYEES, AND HOTEL EMPLOYEES  
16 OPERATING WITHIN A PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT  
17 SUBSIDIES SHALL ENTER INTO AN AGREEMENT WITH ANY LABOR  
18 ORGANIZATION ACTIVE IN REPRESENTING OR SEEKING TO REPRESENT  
19 EMPLOYEES FOR THE PURPOSES OF COLLECTIVE BARGAINING IN THE  
20 GEOGRAPHIC AREA IN WHICH THE PROJECT IS SITUATED.

21 (2) THE AGREEMENT REQUIRED UNDER PARAGRAPH (1) OF THIS  
22 SUBSECTION AT A MINIMUM SHALL CONTAIN A PROVISION PROHIBITING THE  
23 EMPLOYEES FROM ENGAGING IN, ENCOURAGING, OR RATIFYING ANY  
24 PICKETING, HANDBILLING, STRIKING, OR OTHER WORK STOPPAGES AT A  
25 PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES.

26 (E) THE REQUIREMENTS OF THIS SECTION SHALL APPLY:

27 (1) TO EACH EMPLOYER EMPLOYING EMPLOYEES ON OR RELATED  
28 TO A PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES,  
29 INCLUDING EACH TENANT, SUBTENANT, AND ON-SITE CONTRACTOR AND  
30 SUBCONTRACTOR, REGARDLESS OF WHETHER THE EMPLOYER DIRECTLY  
31 RECEIVED A STATE ECONOMIC DEVELOPMENT SUBSIDY; AND

32 (2) FOR THE LONGER OF:

33 (I) THE TERM OF THE PERIOD DURING WHICH THE STATE  
34 ECONOMIC DEVELOPMENT SUBSIDY IS RECEIVED OR THEIR BENEFITS ARE  
35 ENJOYED; OR

1                   **(II) 10 YEARS.**

2   **3-1005.**

3           **(A) THE COMMISSIONER SHALL PUBLISH AT LEAST ANNUALLY, AND**  
4 **UPDATE AS FREQUENTLY AS REQUIRED TO REFLECT ANY INCREASES:**

5                   **(1) THE APPLICABLE PREVAILING WAGE RATES FOR ALL JOB**  
6 **CLASSIFICATIONS COVERED BY THIS SUBTITLE; AND**

7                   **(2) THE BASE MINIMUM WAGE.**

8           **(B) (1) FOR EACH JOB CLASSIFICATION FOR WHICH A PREVAILING**  
9 **WAGE RATE IS REQUIRED UNDER THIS SUBTITLE BUT WHICH IS NOT COVERED**  
10 **UNDER THE DAVIS BACON ACT, 40 U.S.C. § 276A, THE STATE PREVAILING**  
11 **WAGE FOR PUBLIC WORKS, § 17-208 OF THE STATE FINANCE AND**  
12 **PROCUREMENT ARTICLE, OR THE SERVICE CONTRACT ACT, 41 U.S.C. § 351 ET**  
13 **SEQ., THE COMMISSIONER SHALL DETERMINE THE PREVAILING WAGE RATE**  
14 **FOR THAT REGION OF THE STATE WHERE THE WORK IS BEING PERFORMED**  
15 **USING A METHODOLOGY SIMILAR TO THAT PROVIDED UNDER THE STATE**  
16 **PREVAILING WAGE FOR PUBLIC WORKS LAW, § 17-208 OF THE STATE**  
17 **FINANCE AND PROCUREMENT ARTICLE AND ITS IMPLEMENTING REGULATIONS.**

18                   **(2) THE COMMISSIONER SHALL INCLUDE ANY DETERMINATION**  
19 **MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION IN THE PREVAILING WAGES**  
20 **PUBLISHED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.**

21           **(C) THE COMMISSIONER SHALL PROVIDE THAT:**

22                   **(1) THE PREVAILING WAGES AND THE BASE MINIMUM WAGE TAKE**  
23 **EFFECT WITHIN A REASONABLE PERIOD OF TIME AFTER THEY ARE PUBLISHED**  
24 **OR UPDATED; AND**

25                   **(2) EMPLOYERS INCREASE WAGE RATES OF EMPLOYEES AS**  
26 **NECESSARY AT THE TIME THE COMMISSIONER PRESCRIBES.**

27           **(D) EACH AGREEMENT BETWEEN THE STATE AND A DEVELOPER OR**  
28 **OTHER PARTY FOR A PROJECT THAT INVOLVES RECEIVING STATE ECONOMIC**  
29 **DEVELOPMENT SUBSIDIES SHALL CONTAIN THE FOLLOWING PROVISION OR ITS**  
30 **EQUIVALENT:**

31                   **“PREVAILING WAGE REQUIREMENTS. THE PARTY TO THIS**  
32 **AGREEMENT AGREES FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, AND IN**

1 THE CASE OF A DEVELOPER, SHALL OBLIGATE CONTRACTUALLY, OR CAUSE TO  
2 BE OBLIGATED CONTRACTUALLY, ALL TENANTS AND OTHER EMPLOYERS  
3 OPERATING ON PROPERTY BENEFITING FROM A STATE ECONOMIC  
4 DEVELOPMENT SUBSIDY TO COMPLY WITH THE REQUIREMENTS OF TITLE 3,  
5 SUBTITLE 10 OF THE LABOR AND EMPLOYMENT ARTICLE OF THE MARYLAND  
6 CODE. COMPLIANCE WITH THOSE REQUIREMENTS SHALL BE A MATERIAL TERM  
7 OF THIS AGREEMENT.”.

8 (E) AS TO EMPLOYERS EMPLOYING CONSTRUCTION EMPLOYEES,  
9 BUILDING SERVICE EMPLOYEES, FOOD SERVICE EMPLOYEES, GROCERY  
10 EMPLOYEES, OR HOTEL EMPLOYEES, EACH AGREEMENT BETWEEN THE STATE  
11 AND A DEVELOPER OR OTHER PARTY FOR A PROJECT THAT INVOLVES  
12 RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES SHALL CONTAIN THE  
13 FOLLOWING PROVISION OR ITS EQUIVALENT:

14 “PROPRIETARY INTEREST PROTECTION REQUIREMENTS. THE  
15 PARTY TO THIS AGREEMENT AGREES FOR ITSELF AND ITS SUCCESSORS AND  
16 ASSIGNS, AND IN THE CASE OF A DEVELOPER, SHALL OBLIGATE  
17 CONTRACTUALLY, OR CAUSE TO BE OBLIGATED CONTRACTUALLY, ALL  
18 EMPLOYERS EMPLOYING CONSTRUCTION EMPLOYEES, BUILDING SERVICE  
19 EMPLOYEES, FOOD SERVICE EMPLOYEES, GROCERY EMPLOYEES, OR HOTEL  
20 EMPLOYEES ON PROPERTY BENEFITING FROM A STATE ECONOMIC  
21 DEVELOPMENT SUBSIDY TO COMPLY WITH THE REQUIREMENTS OF TITLE 3,  
22 SUBTITLE 10 OF THE LABOR AND EMPLOYMENT ARTICLE OF THE MARYLAND  
23 CODE. COMPLIANCE WITH THESE REQUIREMENTS SHALL BE A MATERIAL TERM  
24 OF THIS AGREEMENT.”.

25 **3-1006.**

26 (A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF AN EMPLOYER  
27 SUBJECT TO THIS SUBTITLE IS ENTITLED TO A WAGE RATE SPECIFIED UNDER  
28 THIS SUBTITLE, THE EMPLOYER SHALL POST IN A PROMINENT AND EASILY  
29 ACCESSIBLE PLACE AT THE WORK SITE OF THE EMPLOYEE A NOTICE OF:

30 (1) THE PREVAILING WAGES FOR JOB CLASSIFICATIONS  
31 EMPLOYED AT THE WORK SITE AND THE BASE MINIMUM WAGE;

32 (2) EMPLOYEE RIGHTS UNDER THIS SUBTITLE; AND

33 (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE  
34 COMMISSIONER, AND A STATEMENT ADVISING WORKERS THAT IF THEY HAVE  
35 BEEN PAID LESS THAN THE PREVAILING WAGE RATE THEY MAY NOTIFY THE  
36 COMMISSIONER AND REQUEST AN INVESTIGATION.

1           **(B) THE NOTICE REQUIRED UNDER THIS SECTION SHALL:**

2                   **(1) BE DEVELOPED BY THE COMMISSIONER IN ENGLISH,**  
3 **SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT A**  
4 **WORK SITE; AND**

5                   **(2) (I) ON REQUEST OF AN EMPLOYER, BE PROVIDED WITHOUT**  
6 **CHARGE TO THE EMPLOYER; OR**

7                               **(II) MADE AVAILABLE WITHOUT CHARGE FOR DOWNLOAD**  
8 **ON THE INTERNET.**

9           **(C) (1) AN EMPLOYER SHALL KEEP AN ACCURATE RECORD SHOWING**  
10 **THE NAME, ADDRESS, JOB CLASSIFICATION, WAGES PAID, AND NUMBER OF**  
11 **HOURS WORKED FOR EACH EMPLOYEE.**

12                   **(2) THE RECORD SHALL BE PRESERVED FOR 3 YEARS FROM THE**  
13 **DATE OF FINAL PAYMENT.**

14                   **(3) (I) IF AN EMPLOYER DOES NOT MAINTAIN OR RETAIN**  
15 **ADEQUATE RECORDS DOCUMENTING WAGES PAID, OR DOES NOT ALLOW THE**  
16 **COMMISSIONER REASONABLE ACCESS TO THE RECORDS, THERE IS A**  
17 **REBUTTABLE PRESUMPTION THAT THE EMPLOYER HAS NOT PAID THE**  
18 **REQUIRED WAGES.**

19                               **(II) THE EMPLOYER MAY REBUT THE PRESUMPTION BY**  
20 **CLEAR AND CONVINCING EVIDENCE THAT THE EMPLOYER HAS PAID THE**  
21 **REQUIRED WAGES.**

22           **(D) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER SUBMIT**  
23 **REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER DETERMINES**  
24 **NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND ENFORCEMENT OF THIS**  
25 **SUBTITLE.**

26           **(F) (1) AN EMPLOYER OR OTHER PERSON MAY NOT DISCHARGE OR**  
27 **TAKE ANY OTHER ADVERSE ACTION AGAINST ANY PERSON IN RETALIATION FOR:**

28                               **(I) ASSERTING ANY CLAIM OR RIGHT UNDER THIS**  
29 **SUBTITLE;**

30                               **(II) ASSISTING ANY OTHER PERSON IN ASSERTING ANY**  
31 **CLAIM OR RIGHT UNDER THIS SUBTITLE; OR**

1                   (III) INFORMING ANY PERSON ABOUT THEIR RIGHTS UNDER  
2 THIS SUBTITLE.

3                   (2) (I) IF AN EMPLOYER TAKES ADVERSE ACTION AGAINST A  
4 PERSON WITHIN 90 DAYS AFTER A PERSON ENGAGES IN ANY ACTIVITY  
5 PROTECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THERE IS A  
6 REBUTTABLE PRESUMPTION THAT THE EMPLOYER'S ACTION WAS RETALIATION.

7                   (II) THE EMPLOYER MAY REBUT THE PRESUMPTION BY  
8 CLEAR AND CONVINCING EVIDENCE THAT THE EMPLOYER'S ACTION WAS TAKEN  
9 FOR OTHER PERMISSIBLE REASONS.

10 **3-1007.**

11           (A) AN EMPLOYER WHO IS FOUND TO HAVE FAILED TO PAY THE WAGES  
12 REQUIRED UNDER THIS SUBTITLE SHALL PAY THE EMPLOYEE LIQUIDATED  
13 DAMAGES, INCLUDING:

14                   (1) THE BALANCE OF THE COMPENSATION OWED TO THE  
15 EMPLOYEE, INCLUDING INTEREST THEREON; AND

16                   (2) AN ADDITIONAL AMOUNT EQUAL TO TWICE THE UNPAID  
17 COMPENSATION.

18           (B) AN EMPLOYER THAT VIOLATES THE APPRENTICESHIP PROGRAM  
19 PARTICIPATION REQUIREMENTS SPECIFIED UNDER § 3-1004(B) OF THIS  
20 SUBTITLE IS SUBJECT TO THE PENALTIES AND REMEDIES PROVIDED UNDER §  
21 17-606 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

22           (C) AN EMPLOYER THAT RETALIATES AGAINST AN EMPLOYEE OR  
23 OTHER PERSON IN VIOLATION OF THIS SUBTITLE SHALL MAKE THE EMPLOYEE  
24 OR PERSON WHOLE AND PAY THE EMPLOYEE OR PERSON LIQUIDATED DAMAGES  
25 IN THE AMOUNT OF \$2,500 FOR EACH ACT OF RETALIATION.

26           (D) (1) IF A PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT  
27 SUBSIDIES FAILS TO COMPLY WITH THE REQUIREMENTS UNDER § 3-1004(C)  
28 AND (D) OF THIS SUBTITLE, THE COMMISSIONER SHALL PROVIDE WRITTEN  
29 NOTICE TO THE VIOLATING EMPLOYERS AND ANY DEVELOPER INVOLVED IN THE  
30 PROJECT OF THE REQUIREMENTS UNDER § 3-1004(C) AND (D) OF THIS  
31 SUBTITLE.

32                   (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF THE  
33 VIOLATING EMPLOYER FAILS TO SIGN AN AGREEMENT CONFORMING TO THE

1 REQUIREMENTS UNDER § 3-1004(C) AND (D) OF THIS SUBTITLE WITHIN 30 DAYS  
2 OF RECEIVING THE NOTICE FROM THE COMMISSIONER:

3 (I) IF THE PROJECT RECEIVING STATE ECONOMIC  
4 DEVELOPMENT SUBSIDIES IS A LESSEE OF PROPERTY FROM THE STATE, THE  
5 LESSEE SHALL GUARANTEE TO THE STATE PAYMENT OF ALL RENT OF THAT  
6 EMPLOYER WITHIN 30 DAYS FOLLOWING THE EMPLOYER'S PERIOD OF CURE; OR

7 (II) IF THE PROJECT RECEIVING A STATE ECONOMIC  
8 DEVELOPMENT SUBSIDY IS NOT THE LESSEE OF PROPERTY FROM THE STATE,  
9 THE PROJECT RECEIVING STATE ECONOMIC DEVELOPMENT SUBSIDIES, OF  
10 WHICH THE EMPLOYER IN VIOLATION OF THE REQUIREMENTS UNDER §  
11 3-1004(C) AND (D) OF THIS SUBTITLE IS A PART, SHALL REPAY TO THE STATE  
12 THE BALANCE OF THE OUTSTANDING PRINCIPAL OF THE STATE'S INVESTMENT  
13 IN THE PROJECT WITHIN 30 DAYS FOLLOWING THE EMPLOYER'S PERIOD OF  
14 CURE.

15 (3) THE AVAILABILITY TO THE STATE OF THE REMEDIES  
16 PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY NOT PRECLUDE  
17 THE STATE FROM PURSUING EXISTING COMMON LAW REMEDIES FOR BREACH  
18 OF CONTRACT IN A COURT OF COMPETENT JURISDICTION IF ANY EMPLOYER  
19 VIOLATES THE TERMS OF ITS CONTRACT WITH THE STATE.

20 (E) THE COMMISSIONER AND ANY COURT OF COMPETENT  
21 JURISDICTION MAY ORDER PAYMENT OF UNPAID COMPENSATION, DAMAGES  
22 AND CIVIL PENALTIES, AND ANY OTHER APPROPRIATE RELIEF, INCLUDING  
23 REINSTATEMENT, FOR A VIOLATION OF THIS SUBTITLE.

24 3-1008.

25 (A) AN EMPLOYEE, INDIVIDUAL, OR ORGANIZATION MAY FILE A  
26 COMPLAINT WITH THE COMMISSIONER FOR ANY VIOLATION OF THIS SUBTITLE.

27 (B) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE  
28 COMMISSIONER SHALL INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH  
29 THIS SUBTITLE.

30 (C) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN  
31 EMPLOYEE UNDER THIS SUBTITLE IS CONFIDENTIAL AND MAY NOT BE  
32 DISCLOSED TO THE EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

33 (D) FOR THE PURPOSES OF ENFORCING THIS SUBTITLE, AN EMPLOYER  
34 SUBJECT TO THIS SUBTITLE SHALL ALLOW THE COMMISSIONER OR THE  
35 COMMISSIONER'S DESIGNEE:

1           **(1) ACCESS TO A WORK SITE AND PAYROLL RECORDS; AND**

2           **(2) THE OPPORTUNITY TO INTERVIEW EMPLOYEES.**

3           **(E) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION,**  
4 **THE COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.**

5           **(2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER**  
6 **SHALL SERVE PERSONALLY OR BY MAIL WRITTEN NOTICE OF THE HEARING ON**  
7 **ALL INTERESTED PARTIES.**

8           **(3) THE NOTICE SHALL INCLUDE:**

9                   **(I) A STATEMENT OF FACTS DISCLOSED IN THE**  
10 **INVESTIGATION; AND**

11                   **(II) THE TIME AND PLACE OF THE HEARING.**

12           **(4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:**

13                   **(I) SUBPOENA WITNESSES;**

14                   **(II) ADMINISTER OATHS; AND**

15                   **(III) COMPEL THE PRODUCTION OF RECORDS, BOOKS,**  
16 **PAPERS, AND OTHER EVIDENCE.**

17           **(F) (1) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING,**  
18 **THE COMMISSIONER SHALL:**

19                   **(I) ISSUE A DETERMINATION; AND**

20                   **(II) SERVE PERSONALLY OR BY MAIL EACH INTERESTED**  
21 **PARTY WITH A COPY OF THE DETERMINATION.**

22           **(2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS**  
23 **SUBTITLE, THE COMMISSIONER SHALL ORDER PAYMENT OF RESTITUTION AND**  
24 **LIQUIDATED DAMAGES IN ACCORDANCE WITH § 3-1007 OF THIS SUBTITLE.**

25           **(3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL**  
26 **PAY THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE**  
27 **COMMISSIONER'S DETERMINATION.**

1 **3-1009.**

2 (A) (1) (I) AN ACTION MAY ALSO BE BROUGHT AGAINST AN  
3 EMPLOYER OR OTHER PARTY FOR A VIOLATION OF THIS SUBTITLE BY AN  
4 EMPLOYEE OR A PERSON ACTING ON BEHALF OF AN EMPLOYEE OR ON BEHALF  
5 OF ALL SIMILARLY SITUATED EMPLOYEES IN ANY COURT OF COMPETENT  
6 JURISDICTION.

7 (II) IN AN ACTION BROUGHT UNDER THIS SUBTITLE, A  
8 PREVAILING PLAINTIFF SHALL BE AWARDED REASONABLE ATTORNEY'S FEES  
9 AND COSTS.

10 (2) A DETERMINATION BY THE COMMISSIONER THAT AN  
11 EMPLOYER IS REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN  
12 EMPLOYEE FROM FILING AN ACTION UNDER THIS SECTION.

13 (B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A  
14 SUIT FOR WAGES.

15 (2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL  
16 HAVE THE SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

17 (C) FAILURE BY AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING  
18 THE PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED  
19 UNDER THIS SUBTITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS  
20 SECTION.

21 **3-1010.**

22 THE COMMISSIONER SHALL ADOPT REGULATIONS TO INTERPRET,  
23 IMPLEMENT, AND ENFORCE THIS SUBTITLE.

24 **3-1011.**

25 THIS SUBTITLE MAY NOT BE CONSTRUED TO PREEMPT OR OTHERWISE  
26 LIMIT THE APPLICABILITY OF ANY LAW THAT PROVIDES FOR PAYMENT OF  
27 HIGHER OR SUPPLEMENTAL WAGES OR BENEFITS.

28 **3-1012.**

29 THIS SUBTITLE SHALL BE LIBERALLY CONSTRUED TO FAVOR THE  
30 PURPOSES OF THIS SUBTITLE.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
2 construed to apply only prospectively and may not be applied or interpreted to have  
3 any effect on or application to any award of economic development subsidies before the  
4 effective date of this Act.

5           SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this  
6 Act or the application thereof to any person or circumstance is held invalid for any  
7 reason in a court of competent jurisdiction, the invalidity does not affect other  
8 provisions or any other application of this Act which can be given effect without the  
9 invalid provision or application, and for this purpose the provisions of this Act are  
10 declared severable.

11           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2010.